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10/734,678

12/15/2003

Darren Womack

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07/26/2006

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EXAMINER

GORDON, STEPHEN T

ART UNIT

PAPER NUMBER

3612

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/734,678

Applicant(s)

WOMACK ET AL.

Examiner

Stephen Gordon

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-19, 21-24 and 26-33 is/are pending in the application.
- 4a) Of the above claim(s) 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-19, 21, 22, 24 and 26-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claim 23 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention. Election was made **without** traverse in the reply filed on 12-2-05.

2. Claims 16-19, 21-22, 24, and 26-33, as newly amended, are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Specifically, the newly added language to base claim 16 indicating that the second tie-down catch extends in a direction opposite the direction of the first tie-down catch is confusing and is apparently misdescriptive of the disclosed invention. Moreover, such language does not appear to be clearly supported in the instant application papers as originally filed and defines new matter. Note in figure 1 of the instant application, portions of each of the outer catch sections extend downward and in substantially the **same** direction as each other. Moreover, while other portions of the outer catch sections extend away from each other, they do not extend *exactly* in opposite directions as such – note for example figure 8 of the instant disclosure. The new claim language of claim 16 is further confusing with reference to “the direction of the first tie-down catch” as such would appear to imply that such catch extends in only a single direction. As noted immediately above, the first tie-down catch actually extends in *at least two*

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directions, and the reference to "the...direction" appears to be in error and defines new matter.

3. Claims 16-19, 21-22, 24, and 26-33, as newly amended, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16, the recitation that the second tie-down catch extends in a direction opposite the direction of the first tie-down catch is confusing and is apparently misdescriptive of the disclosed invention for the reasons discussed above with regard to the section 112-first paragraph rejection above.

Additionally, "the direction of the first tie-down catch" is confusing and lacks clear antecedent basis as a catch could define multiple directions as is the case with the instant invention. Again this language is confusing and is apparently misdescriptive of the disclosed invention for the reasons discussed above with regard to the section 112-first paragraph rejection above.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 16-19, 21-22, 24, and 26-33, as newly amended and as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Ingram '335.

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Note main body (66, 70, 74+), rotatable wheel 82 received in an aperture of the main body (figure 2), and locking plate 80 threadably coupled to the wheel as broadly claimed.

Regarding claim 16 as newly amended, elements 62 and 64 could be used to aid tie down securement and read on the tie down catches as broadly claimed. Additionally, the tie down catches are angled somewhat away from each other and are deemed to project outward from the main body in opposite directions as broadly claimed and as best understood. Noting again this language is very confusing and apparently misdescriptive of the disclosed invention as detailed above in the section 112 – first and second paragraph rejections. Finally, the main body and catches are deemed to define “a cleat shape” as newly broadly claimed. Note Webster’s Ninth New Collegiate Dictionary (copyright 1990) defines a “cleat” as “a wedge shaped piece” or “a projecting piece that furnishes a grip”. Clearly the structure of Ingram ‘335 would define a wedge shaped piece. Moreover, Ingram ‘335 is designed to accept/grip a tie strap 78 and would clearly define a projecting piece that furnishes a grip.

Claim 17, the fitting could be used with a rail scallop and is deemed adapted as broadly claimed. Additionally, in as much as the rail and scallop feature per se are not positively recited elements of the instant claimed combination, the functional language relating thereto is given little patentable weight.

Claim 18, element 84 is deemed “generally rectangular in shape” and defines two rounded corners as broadly claimed.

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Claim 19, the bottom oppositely projecting legs of element 58 (note figure 4) are deemed to define projections as broadly claimed.

Claim 21, the body defines a generally D-shaped cross section as broadly claimed.

Claim 22, note flat base 74+. Additionally, the corners of top wall 70 are shown as radiused/rounded and such construction would define an arcuate upper portion as broadly claimed.

Claim 24, the longitudinal axis of the attaching stud, which could be considered part of the connecting plate, would be oriented as broadly claimed. Additionally, in as much as the rail structure per se is not positively recited elements of the instant claimed combination, the functional/positional language relating thereto is given little patentable weight. Note also, an attachment rail could be configured to be wider than it is long.

Claim 26 note rail 14.

Claim 27, note element 58.

Claim 28, the device is deemed configured as broadly claimed. Moreover, in as much as the rail structure per se is not positively recited elements of the instant claimed combination, the functional/positional language relating thereto is given little patentable weight.

Claim 29, at least element 80 is configured as broadly claimed. Moreover, in as much as the rail structure per se is not positively recited elements of the instant claimed combination, the functional/positional language relating thereto is given little patentable weight.

Claim 30, see figure 2.

Claim 31, see figure 3.

Claim 32, the bottom oppositely projecting legs of element 58 (note figure 4) are deemed to define slot guide portions as broadly claimed.

Claim 33, the term major axis of the rail is broad enough to encompass a horizontal or vertical axis of the rail cross section. At least portions of the first and second catches would project substantially parallel to at least one of these axes as broadly claimed. Moreover, in as much as the rail structure per se is not positively recited elements of the instant claimed combination, the functional/positional language relating thereto is given little patentable weight.

6. Applicant's arguments with respect to the rejected claims have been considered but are moot in view of the new ground(s) of rejection.

Applicant should note, in general the instant invention clearly is not configured identically to the relied upon prior art. The claims as newly presented appear to be *beginning* to move in a direction away from the teachings of the prior art and possibly toward patentable subject matter. Application of the prior art is complicated to some degree in this case by the introduction of language deemed indefinite and not clearly supported in the original papers as detailed in the section 112 rejections above.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (571) 272-6661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

 7-23-06
Stephen Gordon

STEPHEN T. GORDON
PRIMARY EXAMINER